

APPEAL NO. 001464

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 27, 2000. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and had disability as a result of her compensable injury from January 15 to July 30, 1998. In its appeal, the appellant (carrier) argues that the hearing officer's injury and disability determinations are against the great weight of the evidence. In her response to the carrier's appeal, the claimant urges affirmance. Although the claimant contended at the hearing that she had disability through the date of the hearing at the hearing, she did not appeal the hearing officer's determination that her disability ended on July 30, 1998.

DECISION

Affirmed.

The parties stipulated that the date of injury of the claimant's alleged repetitive trauma injury is _____. The claimant testified that on that date she was working as a clerk in the data bank of the employer. The claimant stated that her job duties required her to make copies of documents, collate the copies, proofread them, place them in binders, and box the binders up for delivery. She stated that her job duties required her to carry boxes containing reams of paper to put in the copy machines and perform repetitive lifting, bending, stooping, and twisting. The claimant testified that on _____ when she bent over to place the manuals into a box and slid the full box across the floor, she developed severe low back pain such that it was hard for her to stand back up. The claimant acknowledged that she was pregnant at the time of her alleged injury and that in December 1997 she had surgery to stitch her cervix because she was having pre-term labor. The claimant testified that on January 5, 1998, she had been given a full-duty work release from Dr. Z, her obstetrician. A written statement from claimant's supervisor, Ms. H, confirms that the claimant brought in a work release to the employer on January 5, 1998.

On January 16, 1998, the claimant sought medical treatment with Dr. L, a chiropractor, for her low back complaints. Dr. L diagnosed a lumbar strain/sprain and sciatica. The claimant testified that Dr. L manipulated her spine and provided ultrasound treatments; however, she stated that she consulted with Dr. Z about Dr. L's treatment and Dr. Z expressed concern that the ultrasound might damage the baby. Thus, Dr. Z referred the claimant to Dr. S, an orthopaedic surgeon. In a January 26, 1998, letter to Dr. Z, Dr. S diagnosed lumbar strain and a probable herniated disc in the lumbar spine. In May 1998, the claimant had her baby; however, she testified that her back problems continued after the delivery. In separate reports dated July 30, 1998, both Dr. Z and Dr. S opined that the claimant's continuing low back problems were not related to her recent pregnancy. In a letter to the claimant's attorney dated September 14, 1999, Dr. S addressed the issue of causation, as follows:

I believe she had a pre-existing condition; that being thoracolumbar scoliosis. Her work-related accident caused an aggravation of that condition, bringing it to the fore. I believe that her signs and symptoms are most compatible with a disc herniation and do not believe that this current problem is a result of her pregnancy. This would more likely be the result of her work related activity in which she describes lifting objects weighing 20-30 pounds, particularly if it is a repetitive motion and involves a lot of bending activity. Certainly her pregnancy will aggravate the back pain due to increased stress on the back however, not to the degree that it would cause a disc herniation, which I believe is the case here.

The carrier had Dr. T, an orthopaedic surgeon, conduct a review of the claimant's medical records. In a report dated December 9, 1999, Dr. T concluded that "the claimant's alleged back pain is not due to and did not result from any injury such as repetitive lifting on the job, and it appears that the claimant has had no apparent injury resulting in any disability at all related to her workplace." The carrier also introduced the recorded statements of several of the claimant's coworkers in which they maintained that the claimant advised them that her back problems were related to her pregnancy; that due to her pregnancy they did not permit the claimant to do any heavy lifting, rather, they did it for her; and that the claimant was not required to perform repetitive activities in her job.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that she sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence, decides what weight to give to the evidence, and determines what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

On appeal, the carrier contends that the hearing officer's decision is against the great weight of the evidence. In so arguing, the carrier emphasizes the same factors it emphasized at the hearing. The significance, or lack thereof, of those factors was a matter left to the discretion of the hearing officer. Our review of the record does not reveal that the hearing officer's determination that the claimant sustained a compensable injury is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool; Cain.

The success of the carrier's challenge to the hearing officer's disability determination is premised upon the success of its argument that the claimant did not sustain a compensable injury. Given our affirmance of the injury determination, we likewise affirm the determination that the claimant had disability as a result of her compensable injury from January 15 to July 30, 1998.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Judy L. Stephens
Appeals Judge